> 25 U. S. C., Sec. 476), shall be selected pursuant to the Constitution and By-laws of such tribe, band or group. The employment of attorneys for *all other claimants* shall be subject to the provisions of Sections 2103 to 2106, inclusive, of the Revised Statutes (25 U. S. C., Secs. 81, 82-84)." (Sec. 15 of the Act) (Italics ours)

The Indian Claims Commission in the formulation of its own rules under the authority of the Indian Claims Commission Act specifically recognized that claims might be presented by unorganized claimants. Section 1 (d) of the General Rules of Procedure of the Indian Claims Commission provides as follows:

> "Claims on behalf of any *unorganized* tribe, band, or other identifiable group may be filed by any member of such tribe, band or other identifiable group as representative of all its members." (Italics ours)

Section 8 (c) of the Rules of the Commission provides as follows:

> "Petitions filed by one or more members on behalf of an *unorganized* tribe, band, or other identifiable group shall be verified and shall aver (1) a description of the unorganized tribe, band or group of sufficient comprehension to identify the tribe, band or group on whose behalf the petition is filed." (Italics ours)

These rules of the Commission fall not only within the authority of the Commission to make its own rules allowed by the Act, but squarely within the power and the duty conferred upon the Commission by the Act to hear unorganized claimants through their individual members as their representatives. We see then when we contemplate the purpose of the Indian Claims Act and the provisions of the Act it is enough if a claimant is an "identifiable group" of American Indians having "a common claim" and such a group neither has to be organized nor recog-

nized by the Secretary of the Interior to bring a claim before the Indian Claims Commission. If the group suing has a recognized tribal or group organization, it speaks through that organization. If it has no such organization, it may be represented by individual members suing in a representative capacity on behalf of the group as in the claim of respondents.

Respondents are suing as individual members in a representative capacity for the Creek nation of 1814. They are an "identifiable group" and they have "a common claim". They come, therefore, clearly within the terms of the Indian Claims Act.

G. The Class of Beneficiaries of the Remedial Indian Claims Commission Act of 1946 is to be Determined by a Fair and Liberal Construction of the Act and Such Class is Not to be Limited or Defined by the Anachronistic Rules of Indian Law and Artificial Tribal Distinctions.

Whoever benefits from the Indian Claims Commission Act of 1946 derives from this Act of our Congress designed to give delayed redress to tribes, bands, or other identifiable groups of American Indians who may have suffered wrong from the United States in the past. Petitioners seek to establish their exclusive right to benefit from whatever redress may be given for an injury done to the Creek Nation in 1814 in terms of Indian law as it existed when the Indians were regarded and treated analogously to sovereign nations. The Court knows that those conditions no longer exist. The Indian nations once existing east of the Mississippi long ago were broken up and, at least since the Act of 1871, by the Act of Congress, cannot be regarded as "an independent nation, tribe, or power with whom the United States may contract by treaty; * * *." Petitioners would be as accurate to claim the right to inherit by the laws of primogeniture in this

country, as to claim that the ancient rules of Indian tribal law are still in effect for the Indians in Oklahoma.

The Court of Claims in this case traced the course of the United States in bringing about the change in character and status of the organization and land of the Indians in the Indian Territory. The Court said:

> "Toward the latter part of the Nineteenth Century, the United States embarked upon a program to abolish communal ownership of land in the Indian Territory, by dissolving the tribal form of government and by allotting tribal lands to the individual members of the tribes to the extent necessary and disposing of the remainder to settlers. Individual members of the tribes were eventually to become citizens of the United States." (R. 103)

Then, the Court recited the Act of 1887 granting United States citizenship to Indians who left their tribes, but guaranteeing existing rights to tribal or other property of all Indians including those who had theretofore left their tribes, and the Act of 1893 by which the Commission was created and directed to make rolls of the citizens of the tribes in the Indian Territory as a basis for the later individual allotment of tribal lands in that Territory and the distribution of tribal funds. The Court thereafter reviews the Acts of 1898 and 1901 respecting further enrollment of the Indians and the allotment of lands in the Indian Territory. Then, the Court says:

> "The Act of May 8, 1906, reaffirmed the prior guarantee to those Indians who had left their tribes and become United States citizens, as to any rights they might have to tribal or other property. Pursuant to the Act of April 26, 1906, the rolls of the Creek Nation for allotment and distribution purposes were closed on March 4, 1907, and tribal ownership of land in the Indian Territory west of the Mississippi was abolished. For certain limited purposes, the Creek Nation west of the Mississippi retained and still maintains a tribal organization". (Per Littleton, Judge, R. 103, 104)

So, there is no longer tribal, communal ownership of the lands in the Indian Territory by the Creek Indians. From the Act of 1871 "The Creek Nation", as they call themselves, is not a nation at all. It is simply an aggregation of Creek Indians living under the laws of the United States, the individuals thereof owning their own property and such tribal organization as they have being allowed by the United States for purposes of convenience. If the Creek Indians in Oklahoma do not communally own their own lands which they once received as a tribe in a tribal capacity, it is surely extraordinary for petitioners to contend that they as a tribe and communally as if they were a sovereign Indian Nation of 150 years ago, now own and have the exclusive right to certain statutory benefits which Congress under remedial legislation has conferred upon the wronged Creek nation of 1814 and, since the members of that Creek Nation of 1814 are now dead, upon their provable descendants.

Those Indians who derive benefits under the Act of 1946 take, therefore, by an Act of Congress and not by Indian law. The lineage which is important in the case is not tribal lineage, but lineage from the identifiable group of Indians composing the Creek nation in 1814, having a common claim against the government for the taking at that time of their common lands.

The Court of Claims very clearly saw and held this point in the following language:

> • • • "the record before the Commission and now before the Court indicates, and we hold, that if there was an injury inflicted by the 1814 treaty, it was an injury to the Creek Nation as it was then constituted, and that any recovery for such injury should be for the benefit of all the descendants of that nation and not for the exclusive benefit of the organized tribe or nation in Oklahoma." (Per Littleton, Judge (R. 114))

The Indian Claims Commission made the same holding in September of 1951 in *Red Lake, Pembina and White*

Earth Bands, Ind. Cl. Com. Docket No. 18-A, in the following language, quoted with approval by the Court of Claims in this case:

> • • • "however, the allegations of the petition clearly show that this claim is presented by individual members, or descendants of members, of the Pembina Band or group of Chippewa Indians which was a party to the 1863 treaty cession of lands, out of which this claim arises, and that they are acting as the representatives of all the members or descendants of members of said band". (R. 111)

And the Indian Claims Commission held in that case that such individual members, or descendants of members of the Pembina Band could sue in a representative capacity under the Indian Claims Act of 1946 and recover for a wrong done their parent tribe in 1863.

The Court of Claims rightly holds that respondents are not seeking to share in communal lands in Oklahoma or elsewhere, but to share in statutory relief accorded to the Creek nation of 1814 in the Indian Claims Commission Act. This principle was upheld by this Court in *U. S.* vs. *Cherokee Nation,* 202 U. S. 101, 26 S. Ct. 588 (1906).

H. The Rule of Lineal Per Capita Succession Suggested by the Court of Claims is a Fair and Reasonable Construction of the Probable Intent of the Congress as to the Descent of Group Claims in Cases Where the Original Members of the Indian Group are Dead.

The Court of Claims, we submit, has held a fair and equitable method for the distribution of the benefits of any recovery which may be had under the Indian Claims Commission Act. The statute itself is silent as to the details of the distribution of the funds gained in actions before the Indian Claims Commission. Taking the whole scope of the Act into consideration, however, it is clear that Congress intended individual Indians to receive their shares

of the funds recovered. This is consonant with the policy of the government long pursued to bring about the individual distribution of all previously held communal property and to vest each Indian with what was rightfully his or hers. Since there is no tribal ownership of property at the present time by the Creeks in Oklahoma, there would seem to be no doubt that Congress intended that even the funds that might be received by that group as their share of any sums recovered would be distributed among the members of the group individually. All the more would that be the proper course for the more unorganized descendants of the Creek nation of 1814.

The Court of Claims, upon this matter, said:

> "And, finally, we hold that in the event of an award for such an injury, it should be for the benefit of all descendants of the Creek Nation as it was constituted in 1814, and recognized by the United States in the treaty of cession of that year, the method of determining the identity of such descendants to be provided for by Congress in making an appropriation to pay the award." (Per Littleton, Judge (R. 114))

Substantially this method of distribution was approved by this Court in *U. S.* vs. *Cherokee Nation*, 201 U. S. 101, 26 S. Ct. 588 (1906). In that case:

> "The Court of Claims decreed that after deducting counsel fees, cost, and expenses, the sum of $1,111,-284.70, with interest, should be paid to the Secretary of the Interior, to be by him received and held for the uses and purposes of paying costs and expenses, as stated, and then distributing the remainder 'directly to the Eastern and Western Cherokees, who were parties either to the Treaty of New Echota, as proclaimed May 23, 1836, or the Treaty of Washington of August 6, 1846, as individuals, whether east or west of the Mississippi River, or to the legal representatives of such individuals' ".

Approving with slight modification, this decision of the Court of Claims, this Court, through Mr. Chief Justice Fuller, held:

> "We concur with the Court of Claims in the wisdom of rendering judgment in favor of the Cherokee Nation, subject to the limitation that the amount thereof should be paid to the Secretary of the Interior, to be distributed directly to the parties entitled to it, but we think that the terms of the second division of the fourth paragraph of the decree, in directing that the distribution be made to 'the Eastern and Western Cherokees,' are perhaps liable to misconstruction, although limited to those 'who were parties either to the Treaty of New Echota, as proclaimed May 23, 1836, or the Treaty of Washington of August 6, 1846, as individuals, whether east or west of the Mississippi River.' This should be modified so as to direct the distribution to be made to the Eastern Cherokees as individuals, whether east or west of the Mississippi, parties to the treaties of 1835-1836 and 1846, and exclusive of the Old Settlers."

And, further held the Court:

> "The Eastern and Emigrant Cherokees, in respect to whom it is stated in their petition 'that they number about 4,500 persons, more or less, all Eastern Emigrant Cherokees, residing for the most part in Cherokee, Graham, Swain, Clay, and Macon counties, North Carolina, some in north Georgia, northern Alabama, and eastern Tennessee, together with about 1,500 Emigrants, portions of their various families gone west, nearly all of whom have been recognized as citizens, and who compose a large portion of those persons heretofore known as the Eastern Band of Cherokee Indians of North Carolina, and others of the same class, whose names, or those of whose ancestors, may be found on the rolls of 1835 and 1838,' asked that 1-4 part of the whole sum recovered be set apart for them as their distributive share. But we think that they are only entitled to receive a per capita payment with the Eastern Cherokees and should obtain their payment accordingly." (26 S. Ct. 600, 601) (1906)

We have pointed out how Congress in the Acts of 1893, 1898, 1900, and 1906 provided for the making of rolls of the Creeks in Oklahoma for allotment and distribution of the tribal lands in the Indian Territory. (R. 103, 104).

The Court of Claims having reviewed this previous action of the Congress quite naturally suggested a method which was analogous, that is, that when Congress made the appropriation of the sums found to be due by the United States to the descendants of the Creek nation of 1814 it should make provision of "the method of determining the identity of such descendants" to receive their several distributive shares of such award. (R. 114).

The Court of Claims, which has handled, by reference from Congress, many Indian claims, has no doubt reached this sensible conclusion out of its long experience in these matters.

This provision for determining the identity of the individual distributees of any sums recovered obviates one of the grounds upon which the Indian Claims Commission denied the petition of respondents to intervene; namely, that the Commission did not have jurisdiction to define the identity of the group entitled to recover on any claim placed before it.

If the decision of the Court of Claims stands, the Indian Claims Commission will simply grant the petition of respondents for intervention before the Commission and render judgment in the amount it has previously found to be due by the United States for the taking of Creek lands in 1814, or such other amount as may represent its final decision as to the damages sustained in the matter, in favor of the Creek nation of 1814. In view of the fact that the Commission has already found liability on the part of the United States and respondents have asked to adopt, if they become intervenors, the record made on liability, upon the granting of respondents' petition for intervention by

direction of the Court of Claims, unless the Commission alters its finding of damages, this case would be settled. The Commission would file its report to Congress as the statute provides. (Section 21)

Section 22 of the Act provides that such a report of the Commission filed with the Congress "shall have the effect of a final judgment of the Court of Claims".

Congress could either direct the Secretary of Interior to identify the individuals entitled to share in the award as was done by the Court of Claims with the approval of this Court in *U. S.* vs. *Cherokee Nation,* 202, U. S. 101, 26 S. Ct. 588 (1906), or Congress could set up the machinery to prepare the necessary rolls, or adopt any other suitable method it might choose. If the Creeks of Oklahoma, calling themselves "The Creek Nation", already have a complete roll, no doubt that would suffice and another would not be necessary. But, this is a far cry from the extraordinary contention of petitioners that Congress intended in the Indian Claims Commission Act that only those Indians who had a roll of themselves immediately accessible could be regarded as the only eligible descendants of deceased members of the Creek nation of 1814 to file a claim entitled to all the funds provided by a humane government seeking to make, as far as it now can, amends for a wrong done that Creek nation in 1814.

Hence, instead of the Court of Claims, as petitioners contend, usurping the powers of Congress, it merely directed on a proper appeal, the Indian Claims Commission to grant the petition of respondents for leave to intervene in this case. This was pursuant to the authority conferred upon the Court of Claims by the Indian Claims Commission Act. The Court of Claims did not direct the Commission to distribute any award made among the members of a tribe, band or group in favor of which an award was made. Congress, not having made specific provision for the distribution of an award among the individuals composing a

tribe, band or group, the Court of Claims merely left that matter for the further action of Congress, either in each individual case when the appropriation is made or, could be, by some general provision Congress might find it appropriate to make it.

CONCLUSION.

Looking at the whole record, it appears that the Court of Claims in this case has fairly and correctly interpreted the Indian Claims Commission Act and properly exercised its appellate jurisdiction thereunder and that the decisions of that Court are without error in law and constitute satisfactory principles for the guidance of the Indian Claims Commission.

WHEREFORE, no sufficient reason appears why the decision of the Court of Claims in this case should be further examined by this Court and the petitions for writ of certiorari should be denied.

Respectfully submitted,

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